

Assembly Bill No. 2346

Passed the Assembly August 29, 2012

Chief Clerk of the Assembly

Passed the Senate August 27, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 6330 of, and to add Chapter 10 (commencing with Section 6720) to Part 1 of Division 5 of, the Labor Code, relating to occupational safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2346, Butler. Agricultural employee safety: heat-related illness.

(1) Existing law permits the Occupational Safety and Health Standards Board within the Department of Industrial Relations to adopt occupational health and safety standards to protect the welfare of employees. The Division of Occupational Safety and Health enforces occupational safety and health standards and orders. Certain violations of these standards and orders are crimes. Existing regulations prescribe duties with respect to heat illness prevention in outdoor places of employment.

This bill would prescribe specified duties on employers to reduce the risk of heat illness among agricultural employees, including the adopted heat illness prevention regulatory requirements. The bill would impose specified civil penalties, and create a private right of action, for violations of these requirements. The bill would impose a state-mandated local program because certain violations of the bill's requirements would be a crime under existing provisions of law. The bill would require the Director of Industrial Relations to provide an annual report to the Legislature regarding the enforcement of the requirements.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) This act may be known, and shall be cited, as the Farm Worker Safety Act of 2012.

(b) It is the intent of the Legislature to ensure that employers provide farm workers with sufficient water and adequate shade and that employers take necessary and appropriate steps to prevent heat illness and death. This act creates a meaningful deterrent for all employers who violate heat illness prevention requirements, especially those employers who are repeat offenders.

SEC. 2. Section 6330 of the Labor Code is amended to read:

6330. (a) The director shall prepare and submit to the Legislature, not later than March 1, an annual report on the division activities. The report shall include, but need not be limited to, the following information for the previous calendar year:

(1) The amount of funds allocated and spent in enforcement, education and research, and administration by the division.

(2) Total inspections made, and citations issued by the division.

(3) The number of civil penalties assessed, total amount of fines collected, and the number of appeals heard.

(4) The number of contractors referred to the Contractors' State License Board for hearing, pursuant to Section 7109.5 of the Business and Professions Code, and the total number of these cases resulting in suspension or revocation of a license.

(5) The report from the division prepared by the Bureau of Investigations for submission to the director pursuant to Section 6315.3.

(6) Recommendations for legislation that improves the ability of the division to provide safety in places of employment.

(7) (A) The number of complaints received charging a violation of Section 3395 of Title 8 of the California Code of Regulations or of Chapter 10 (commencing with Section 6720), and the number of those complaints that did not result in an onsite inspection.

(B) The amount of initial penalties imposed for a violation of Section 3395 of Title 8 of the California Code of Regulations or of Chapter 10 (commencing with Section 6720), the amount by which those penalties were reduced through amendment, the amount by which those penalties were reduced through informal settlement, the amount by which those penalties were reduced through formal settlement, the amount by which those penalties were reduced by decision of the appeals board, other than a decision approving a formal settlement, and the amount by which those penalties were reduced by any other means.

(C) The amount of penalties collected for a violation of Section 3395 of Title 8 of the California Code of Regulations or of Chapter 10 (commencing with Section 6720).

(b) The report shall be made to the Speaker of the Assembly and the Chairperson of the Senate Committee on Rules, for assignment to the appropriate committee or committees for evaluation.

SEC. 3. Chapter 10 (commencing with Section 6720) is added to Part 1 of Division 5 of the Labor Code, to read:

CHAPTER 10. AGRICULTURAL EMPLOYMENT

6720. Except as otherwise provided, this chapter incorporates the definitions set forth in Section 3395 of Title 8 of the California Code of Regulations. For the purpose of this chapter, the following terms have the following meanings:

- (a) “Employee” means an agricultural employee.
- (b) “Employer” means an agricultural employer.
- (c) “Farm operator” includes both of the following:

(1) A person who owns the real property used in the farming operation, except that, when the real property is leased, the owner is considered a farm operator only if he or she gains something of benefit from the farming operation beyond the reasonable and customary rent or cost of leasing the property.

(2) A person who leases the real property used in the farming operation.

(d) “Farming operation” shall be liberally construed to include farming in any of its branches, and includes the production, cultivation, growing, harvesting, packing, whether in a field, packing shed, or any other location, or shipping of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in Section 1141j(f) of Title 12 of the United States Code; any activity necessary to the operation of a dairy farm, as defined in Section 32505 of the Food and Agricultural Code; the raising of livestock, bees, furbearing animals, or poultry; and any practices, including any forestry or lumbering operations, performed by a farm operator or in a farm operation as an incident to or in conjunction with these farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

(e) “Repeat offender” means both of the following:

(1) A farm operator, if the farm operator or any agricultural employer acting on the real property used in the farm operator’s farming operation, violates Section 3395 of Title 8 of the California Code of Regulations or commits any other violation of this chapter on two or more days within a three-year period.

(2) An agricultural employer, other than a farm operator, who violates Section 3395 of Title 8 of the California Code of Regulations or commits any other violation of this chapter on two or more days within a three-year period.

6721. (a) This chapter applies to the control of the risk of occurrence of heat illness among agricultural employees. This chapter is not intended to exclude the application of any section of Title 8 of the California Code of Regulations. This chapter applies to all outdoor places of agricultural employment.

(b) (1) An employer shall comply with Section 3395 of Title 8 of the California Code of Regulations and with any other regulation or statute imposing requirements related to the prevention of heat illness, including those requiring an employer to provide employees with water, shade, or training in the prevention of heat illness.

(2) An employee shall not be discharged or penalized in any way for taking action to secure his or her employer’s compliance with the requirements of this chapter, including the requirements of Section 3395 of Title 8 of the California Code of Regulations. Actions to secure an employer’s compliance with the requirements of this chapter include directly or indirectly communicating with the employer about the requirements of this chapter or the prevention of heat illness; reporting a violation of this chapter or otherwise communicating with a person or entity about the employer’s compliance with the requirements of this chapter; or participating in any way in an investigation, action, or proceeding to enforce the requirements of this chapter.

(c) (1) An employer shall certify by January 31 of each year, or on the first day of operation in any calendar year in which an employer begins an employment relationship after January 31, that the employer has adopted written procedures for complying with the requirements of this chapter, and has acquired and made available to the appropriate persons all materials and equipment necessary for providing employees with water, shade, and training

in the prevention of heat illness, as required by law. This certification shall be in writing, signed, and dated, and shall be made available within 24 hours after a request is made by a representative of the division, an employee, or a representative of an employee.

(2) If, following certification, an employer is found not to have adopted written procedures for complying with the requirements of this chapter, or is found to lack any of the materials and equipment necessary for providing employees with water, shade, and training in the prevention of heat illness, as required by law, there shall be a rebuttable presumption that the certification was false at the time it was made, and the employer shall be subject to penalties for fraud.

6722. (a) (1) In addition to any other available causes of action, irrespective of any action or omission of the division in the enforcement of this chapter, an employee affected by an employer's failure to comply with this chapter, including a failure to comply with Section 3395 of Title 8 of the California Code of Regulations, may bring a civil action against a repeat offender for any of the following:

(A) Injunctive relief.

(B) Damages caused by the failure to comply, including interest on those damages.

(C) If the failure to comply had a direct relationship upon the health or safety of an employee, civil penalties as set forth in Section 6723, except that the penalties shall be reduced by the amount of any penalties that have been imposed and collected by the division against the same employer for the same alleged violation as of the date the civil action is filed.

(2) Fifty percent of any civil penalties recovered by an employee in a civil action brought pursuant to this subdivision shall be distributed to the division, with the remainder distributed to the employee. The entire amount of any damages recovered by the employee shall be distributed to the employee.

(3) Upon a showing in a civil action brought pursuant to this subdivision of an employer's failure to comply with any provision of this chapter, including a failure to comply with Section 3395 of Title 8 of the California Code of Regulations, any prerequisites to the granting of injunctive relief shall be presumed to be satisfied.

(4) An employer who is found to have violated any provision of this chapter, including a failure to comply with Section 3395 of Title 8 of the California Code of Regulations, in a civil action brought pursuant to this subdivision shall be designated a high hazardous industry employer within the meaning of Section 6314.1, and that designation shall be withdrawn only if the judgment against the employer is vacated in its entirety.

(5) An employee who prevails in a civil action brought pursuant to this subdivision is entitled to an award of reasonable attorney's fees and costs of suit, including expert witness fees.

(b) An employee may bring a civil action pursuant to subdivision (a) against an agricultural entity involved in a farming operation, including a farm operator, that is a repeat offender.

(c) The division may bring an administrative proceeding to enforce this chapter, including an administrative proceeding to enforce Section 3395 of Title 8 of the California Code of Regulations, against an agricultural entity involved in a farming operation, including a farm operator, that is a repeat offender. This subdivision does not limit or prevent an enforcement action authorized by any other provision of law.

(d) For purposes of this section, the acts or omissions of an agricultural employer shall be imputed to the farm operator on the real property used in whose farming operation the agricultural employer was acting at the time of the alleged violation of this chapter and that farm operator shall be jointly and severally liable with and to the same extent as the agricultural employer.

(e) A signed statement obtained by the division from an employee that is made under penalty of perjury is admissible in an administrative proceeding brought to enforce this chapter, including an administrative proceeding brought to enforce Section 3395 of Title 8 of the California Code of Regulations.

6723. (a) In a civil action brought by an employee pursuant to Section 6722, for a violation of subdivision (b) of Section 6721, the civil penalties shall be as follows:

(1) For each day on which the violation existed while one or more employees were working and the temperature did not exceed 80 degrees, the penalty shall be the product of five hundred dollars (\$500) multiplied by the number of employees on the work crew at the time of the violation.

(2) For each day on which the violation existed while one or more employees were working and the temperature exceeded 80 degrees but did not exceed 90 degrees, the penalty shall be the product of two thousand dollars (\$2,000) multiplied by the number of employees on the work crew at the time of the violation.

(3) For each day on which the violation existed while one or more employees were working and the temperature exceeded 90 degrees but did not exceed 100 degrees, the penalty shall be the product of five thousand dollars (\$5,000) multiplied by the number of employees on the work crew at the time of the violation.

(4) For each day on which the violation existed while one or more employees were working and the temperature exceeded 100 degrees, the penalty shall be the product of ten thousand dollars (\$10,000) multiplied by the number of employees on the work crew at the time of the violation.

(5) Notwithstanding paragraphs (1) to (4), inclusive, if the violation existed during any work shift when any employee suffered heat illness, the penalty shall be not less than fifty thousand dollars (\$50,000).

(6) Notwithstanding paragraphs (1) to (4), inclusive, no penalty shall exceed two hundred thousand dollars (\$200,000).

(b) (1) In a civil action brought by an employee pursuant to Section 6722, except as otherwise provided in paragraph (2), for a violation of subdivision (c) of Section 6721, civil penalties shall be imposed in the amount of five hundred dollars (\$500) multiplied by the number of days the violation existed while employees were working.

(2) The penalty described in paragraph (1) shall not exceed ten thousand dollars (\$10,000).

(c) (1) A civil penalty imposed and calculated pursuant to subdivision (a) or (b) may be reduced by as much as 50 percent, if the violation did not exist during a work shift when an employee suffered heat illness. A reduction shall be based on the facts and circumstances of the violation, including the following considerations:

(A) The culpability of the employer.

(B) Whether an employee lacked access to water or shade at any time while the violation existed.

(C) The size, sophistication, and financial strength of the employer.

(D) The employer compliance history related to heat illness.

(E) The degree of injury caused by the employer's current or past violations.

(F) Any efforts by an employee or other person to secure the employer's compliance through means other than litigation.

(G) Any expenses incurred by employees, the division, and others in investigating the employer's compliance.

(2) The employer has the burden of proving the existence of facts justifying a reduction of the penalty pursuant to this subdivision.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2012

Governor